



INTEROFFICE MEMORANDUM

TO: KATHERINE FERNANDEZ RUNDLE
State Attorney

DATE: FEBRUARY 26, 2019

FROM: STAFFING/REVIEW TEAM

RE: POLICE SHOOTING CLOSEOUT MEMO
CASE # SAO # 62/17/01/10/010
INJURED: PLACIDE, Daniel

Based on the information obtained and reviewed during the course of the investigation, the conclusion of the staffing/review team is the following: The investigation has determined that Sgt. Nicholas Lopez was involved in the pursuit of a fleeing vehicle, which had been reported stolen in an armed carjacking. One of the occupants in the vehicle was Daniel Placide.

The vehicle eventually crashed in a residential area, and the driver exited the vehicle and fled on foot. Mr. Placide then exited the car with a firearm in his hand. Mr. Placide ignored Sgt. Lopez's loud, verbal commands to get on the ground and not move. Instead, Mr. Placide pointed a firearm at Sgt. Lopez. In fear for his life, Sgt. Lopez fired at Mr. Placide three times. Subsequently, Mr. Placide dropped his firearm and fell to the ground. Two other occupants that were still in the vehicle were also taken into custody by Sgt. Lopez, and fire rescue was summoned for Mr. Placide.

Based on the sworn statements given by all officers involved, crime scene reports and other evidence compiled, it is reasonable to believe that the shooting officer feared for his life and considered it necessary to use deadly force to prevent injury to himself and others.

Therefore, we find that Sgt. Nicholas Lopez (04-1675) was legally justified in the use of deadly force by firing his weapon.

The members of the staffing/review team for this case are:

 _____ Don L. Horn	 _____ Esther Jacobo	 _____ Kathleen Hoague
 _____ Deisy Hernandez	 _____ Howard Rosen	 _____ Reid Rubin
 _____ V. Scott Dunn	 _____ Christine Zahralban	

Approved by State Attorney on this 7 day of March, 2019.

KATHERINE FERNANDEZ RUNDLE
State Attorney





INTEROFFICE MEMORANDUM

TO: STAFFING/REVIEW TEAM

DATE: FEBRUARY 26, 2019

FROM: RAY ARAUJO
Assistant State Attorney

RE: POLICE SHOOTING CLOSEOUT MEMO
CASE #: P.C.B. CASE 17-01; HPD 2017-02996

OFFICER(S) INVOLVED:	HPD SGT. NICHOLAS LOPEZ, ID #04-1675
INJURED:	DANIEL PLACIDE
INJURIES:	MULTIPLE GUNSHOT WOUNDS
DATE & TIME:	JANUARY 10, 2017 3:30 A.M.
LOCATION:	NORTHWEST 89 TH AVENUE AND NORTHWEST 153 RD TERRACE, MIAMI LAKES
WEAPON:	9MM GLOCK MODEL 17 S/N BBBM686 [Sgt. Nicholas Lopez] 9MM RUGER SR9C HANDGUN S/N 332-95194 [Daniel Placide]
LEAD:	HPD DET. MAGELA MONTALVO (ID 1786)
CASE #:	P.C.B. CASE 17-01; HPD 2017-02996
SAO CASE #:	62/17/01/10/010



ANALYSIS

On January 10, 2017, at approximately 3:27 a.m., HPD Officer Earls Gonzalez was patrolling the area of East 4th Avenue and East 21st Street, when he spotted a gray Chevy Malibu bearing Florida tag number HIM-I88. A records check revealed that the vehicle had been reported stolen in an Armed Carjacking on January 2, 2017. Officer Gonzalez attempted to stop the vehicle, which then fled at a high rate of speed. Sgt. Nicholas Lopez, Officer Harold Garzon, and Officer Emilio Cardoso all joined pursuit; each in their own marked police vehicles. Sgt. Lopez was leading the pursuit, followed closely by Officer Cardoso, Officer Garzon, and Officer Gonzalez; in that order. The vehicle fled throughout the City of Hialeah and eventually ended up in Miami Lakes, in a residential area at the intersection of Northwest 89th Avenue and Northwest 153rd Terrace. The front of Sgt. Lopez's police car clipped the rear end of the vehicle. The vehicle then crashed into a corner street sign and ran over a mailbox, where it came to a complete stop. One of the occupants of the vehicle was Daniel Placide.

All of the officers involved in the pursuit – including Sgt. Lopez – agreed to provide sworn statements. Sgt. Lopez stated that he was the first to arrive at the scene, just as the crash occurred. Sgt. Lopez's vehicle was parked at an angle just behind and slightly to the left of the subject vehicle. He stated that he exited his vehicle and pointed his firearm at the subject vehicle. He observed the driver exit the vehicle through the driver's side door and flee on foot. Sgt. Lopez could see that there were more occupants in the subject vehicle as he stood by the open driver's side door of his own vehicle. Placide then exited the subject vehicle from the driver's side with a firearm in his hand. Sgt. Lopez was approximately ten to fifteen feet away from Placide when he gave him loud verbal commands to get on the ground and not move. At that point, Placide pointed the firearm at Sgt. Lopez. Sgt. Lopez stated that he was in fear for his life, so he shot at Placide three times. Placide dropped his firearm and fell to the ground. He suffered one gunshot wound to his leg. In addition to Placide, there were two other occupants still sitting in the rear of the vehicle. Sgt. Lopez took all the subjects into custody and requested fire rescue.

Officer Cardoso stated that he was the second officer to arrive at the scene, just behind Sgt. Lopez. Officer Cardoso further stated that as he exited his vehicle, he heard Sgt. Lopez yelling verbal commands and he heard three shots fired. He did not witness the actual shooting. Officer Cardoso chased after the driver of the vehicle, who was fleeing on foot, but was unable to locate him. When Officer

Cardoso returned to the scene, he assisted Sgt. Lopez, who had two subjects at gunpoint and an additional subject with a gunshot wound, Placide, laying outside the vehicle.

Officer Garzon arrived just behind Officer Cardoso. He also heard three shots fired as he was exiting his vehicle. He advised over the police radio that shots had been fired. As he approached the subject vehicle, he saw that Sgt. Lopez had several subjects at gunpoint. He then turned his attention to the driver of the vehicle who had fled on foot.

Officer Gonzalez was the last officer to arrive at the scene, just after Officer Garzon. Officer Gonzalez stated that he observed two black males sitting inside the subject vehicle, held at gunpoint by Sgt. Lopez. He also saw Placide laying on the ground outside the vehicle. Additionally, Officer Gonzalez observed a silver and black semi-automatic pistol on the ground outside the vehicle by the driver's side. There was also a revolver in plain view in the back seat of the vehicle.

Surveillance footage was obtained from a residence just next to where the shooting occurred. This residence had a camera mounted on the front wall facing the street. The actual shooting takes place outside the viewing area of the camera, just off to the left-hand side of the frame. The video shows that the area is well-lit, with street lamps and the front lighting of some of the homes illuminating the area. The video (which also has audio) begins with the sound of police sirens in the distance. As the sirens get louder and you begin to see the reflection of police lights, you can hear a loud crashing sound. This is consistent with the fleeing vehicle crashing at the scene. This sound is followed immediately by bright police lights illuminating the left-hand side of the screen. This would be consistent with Sgt. Lopez arriving just as the crash occurs. There is an individual that is then seen running very fast on the sidewalk away from the scene – the driver of the vehicle that fled on foot. You can then hear someone yelling very loudly, though what the person is saying is unintelligible. This yelling is then immediately followed by three loud pops which sound like gunshots.

Crime scene technicians processed the scene and discovered three Speer 9mm Luger +P spent casings. These are consistent with the Speer 9mm Luger +P live rounds that were recovered from Sgt. Lopez's firearm. Additionally, the number of casings further corroborates Sgt. Lopez's and Officer Cardoso's statements that there were three shots fired. Two of the casings were found behind Sgt. Lopez's vehicle and one was found next to the left rear of the vehicle. The location of the casings is

consistent with Sgt. Lopez standing on the left-hand side of his vehicle near the driver's side door at the time of the shooting.

CONCLUSION

The role of the State Attorney in this investigation and in conducting this review is limited to determining whether a criminal violation of Florida law has occurred, whether any person may be held criminally responsible, and whether such criminal responsibility can be proven beyond a reasonable doubt in a court of law. The State Attorney does not establish agency policy, procedures, and training requirements. Nor does the State Attorney have any responsibility for determining disciplinary action or pursuing civil litigation in these matters. In other words, given the applicable law, the State Attorney's role is to determine whether the actions of Sgt. Lopez constitute a criminal act that can be proven beyond and to the exclusion of every reasonable doubt.

We have reviewed the Hialeah Police Department closeout memorandum regarding this incident. We have also reviewed the sworn statements, crime scene reports, 911 calls, radio dispatch recordings and other evidence compiled by the Hialeah Police Department under Contact Shooting P.C.B. (Professional Compliance Bureau) Case No. 17-01. We find the memorandum to be complete, thorough and consistent with the witness statements as well as consistent with our observations at the scene. We adopt and attach that memorandum hereto and also offer our conclusion based on the results of our investigation and review.

Section 776.012, Florida Statutes, permits the use of deadly force when a person believes such force is necessary to prevent imminent death or great bodily harm to himself or another or to prevent the commission of a forcible felony. Further, Section 776.05, Florida Statutes, permits a law enforcement officer to use any force that he believes is necessary to defend himself or another from bodily harm while making an arrest. The factual circumstances that were known to Sgt. Lopez at the time of the shooting were that the vehicle he was pursuing had been stolen during an armed carjacking and that the vehicle was in flight from several marked patrol units who were exhibiting lights and sirens in pursuit. According to Sgt. Lopez's statement, Placide exited the vehicle holding a firearm. Sgt. Lopez gave loud verbal commands to Placide to get on the ground. The fact that loud verbal commands were given just prior to the shooting is corroborated both by Officer Cardoso and by the video surveillance footage from the

nearby residence. Placide refused to comply with those commands and instead pointed his firearm at Sgt. Lopez. Sgt. Lopez stated that he was in fear for his life when he fired at Placide.

Placide was committing an aggravated assault on a law enforcement officer at the time of the shooting. Placide initiated the threat of deadly force by pointing his firearm at Sgt. Lopez. Sgt. Lopez only used deadly force to prevent death or injury to himself. Based on the statutory provisions, we find that the shooting was legally justified under Fla. Stat. 776.012 and Fla. Stat. 776.05.

Prepared by:



Assistant State Attorney